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EXAMINER

OBEID, FAHD A

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TALIA MASHIACH,
KELLY FIFIELD,
SUSAN BUCKLES, and
MICHAEL LAMBERT

Appeal 2014-006567
Application 12/974,977¹
Technology Center 3600

Before HUBERT C. LORIN, KENNETH G. SCHOPFER, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Talia Mashiach, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE and enter a NEW GROUND OF REJECTION.

¹ The Appellants identify Eved, LLC as the real party in interest. App. Br. 2.

THE INVENTION

Claim 9, reproduced below, is illustrative of the subject matter on appeal.

9. A computer-implemented method of managing an event, comprising:

selectively granting, by a portal, requests to become members;

receiving requests to the portal from members to be a host for an event;

designating a host by selectively granting, by the portal, one of the member requests;

receiving information regarding the event by the portal from the host;

receiving proposals for the event by the portal from a plurality of members;

receiving, from the host by the portal, a plurality of selections of candidate vendors based on the member proposals;

receiving, from the host by the portal, a designation of a selected venue;

receiving, by the portal from the candidate vendors, requests for access to an area of the selected venue;

selectively granting, by the portal, the area access requests; and

supplying access indicators to the candidate vendors associated with the granted access requests.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Moro

US 6,363,351 B1

Mar. 26, 2002

Baillargeon	US 2002/0046076 A1	Apr. 18, 2002
Klehr	US 2007/0094295 A1	Apr. 26, 2007
Islam	US 2008/0133286 A1	June 5, 2008
Etkin	US 7,590,592 B2	Sept. 15, 2009

The following rejections are before us for review:

1. Claims 1, 3, 5–8, 11, 13, and 15–18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Islam and Baillargeon.
2. Claims 2 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Islam, Baillargeon and Etkin.
3. Claims 4 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Islam, Baillargeon and Klehr.
4. Claims 9, 10, 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Islam and Moro.

ISSUES

Did the Examiner err in rejecting claims 1, 3, 5–8, 11, 13, and 15–18 under 35 U.S.C. § 103(a) as being unpatentable over Islam and Baillargeon?

Did the Examiner err in rejecting claims 2 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Islam, Baillargeon and Etkin?

Did the Examiner err in rejecting claims 4 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Islam, Baillargeon and Klehr?

Did the Examiner err in rejecting claims 9, 10, 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Islam and Moro?

ANALYSIS

The rejection of claims 1, 3, 5–8, 11, 13, and 15–18 under 35 U.S.C. § 103(a) as being unpatentable over Islam and Baillargeon.

Independent claim 1 includes the limitation “comparing, by the portal, information received from [] candidate vendors to [] venue requirements.”

The Final Rejection relied on paragraphs 41, 42, and 255 of Islam as evidence that said claim limitation was disclosed in the prior art. *See* Final Act. 7.

The Appellants reproduced said Islam disclosures in the Appeal Brief. *See* App. Br. 12.

We agree with the Appellants that based on a plain reading of said Islam disclosures it is self-evident that they do not disclose said claim limitation.

The Examiner later cites paragraphs 61–80 of Islam as additional evidence that said claim limitation was disclosed in the prior art. *See* Ans. 4. Said disclosures discuss various factors when considering a venue. *See* para. 60 (“once the clients have decided upon requirements for the event being planned, they can find out a list of venues that suit their requirements specifically with an easy to use search option available at the website.”). But the claim calls for the *portal* to perform a comparing operation. All that Islam describes is a search feature. The comparing is done by the user, not the system. Because Islam’s system does not perform a comparing operation, Islam cannot then “designat[e], by the portal, at least one of the candidate vendors as an authorized vendor based on the comparisons” as the claim further requires.

Accordingly, the rejection of claim 1 is not sustained because a prima facie case of obviousness has not been made in the first instance by a preponderance of the evidence. Claim 3 depends from claim 1 and thus its rejection over the cited prior art combination is also not sustained for the same reason.

Independent claim 11 includes said claim limitation. Accordingly, the rejection of claim 11 and claim 13 that depends from it is also not sustained for the same reason.

Independent claim 5 calls for

receiving information regarding [an] event by [a] portal
from [a] host;

...

receiving insurance requirements by the portal from [a]
selected venue;

receiving insurance information by the portal from a
plurality of candidate vendors;

performing comparisons of the insurance information to
the insurance requirements; and

designating at least one of the candidate vendors as an
authorized vendor, based on the comparisons.

The Examiner found, *inter alia*, that Islam discloses “performing comparisons of the insurance information to the insurance requirements; (See Islam: Para 255, Para 41).” Final Act. 18. It is self-evident from a plain reading of said Islam disclosures that they do not disclose said claim limitation.

Accordingly, the rejection of claim 5 is not sustained because a prima facie case of obviousness has not been made in the first instance by a

preponderance of the evidence. Claims 6–8 depend from claim 5 and thus their rejection over the cited prior art combination is also not sustained for the same reason.

Independent claim 11 includes said claim limitation. Accordingly, the rejection of claim 11 and claim 13 that depends from it is also not sustained for the same reason.

Independent claim 15 includes said claim limitation. Accordingly, the rejection of claim 15 and claims 16–18 that depend from it is also not sustained for the same reason.

The rejection is not sustained.

The rejection of claims 2 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Islam, Baillargeon and Etkin.

The rejection of claims 4 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Islam, Baillargeon and Klehr.

Claims 2 and 4 depend from claim 1 and claims 12 and 14 depend from claim 11. Their respective rejections are not sustained because a prima facie case of obviousness has not been made out in the first instance by a preponderance of the evidence for the reasons given above with respect to the rejection of claim 1.

The rejection of claims 9, 10, 19 and 20 under 35 U.S.C. §103(a) as being unpatentable over Islam and Moro.

Independent claims 9 and 19, and therefore dependent claims 10 and 20 as well, include the claim limitations

receiving, by [a] portal from [] candidate vendors,
requests for access to an area of [a] selected venue;

selectively granting, by the portal, the area access requests; and

supplying access indicators to the candidate vendors associated with the granted access requests.

The Examiner relied on paragraphs 67, 71 and 79 of Islam as evidence that the prior art discloses the receiving and selectively granting steps and column 5, lines 48–58 and Figure 3, blocks 110, 112, 120, 122 and 124 of Moro as evidence that the prior art discloses the supply step. *See* Final Act. 23–24.

We agree with the Appellants that Moro discloses “granting access to subscribers for entertainment events, in the form of a card or universal token.” App. Br. 20. We do not see how Moro’s disclosure of using a card or token to grant access to event subscribers would lead one of ordinary skill in the art to supply access indicators to candidate vendors whose requests for access to an area of a selected venue have been selectively granted as claimed.

Accordingly, the rejection is not sustained.

NEW GROUND OF REJECTION

Claims 1–20 are rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

Alice Corp. Pty. Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent eligibility under § 101.

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

Taking claim 1 as representative of the claims on appeal, the claimed subject matter is directed to “supplying information regarding entities associated with the event-planning industry.” Information-supplying is a fundamental building block of human ingenuity. As such it is an abstract idea.

Step two is “a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012)).

We see nothing in the subject matter claimed that transforms the abstract idea of information-supplying into an inventive concept.

The method of claim 1 sets out five “receiving” steps for gathering various types of information. The other steps involve the selection, maintenance and distribution of other types of information; that is, “selectively granting [] requests;” “creating member files in a database using the received information;” “selectively supplying” a certain information; “comparing” information; and “designating, by the portal, at least one of the candidate vendors as an authorized vendor based on the comparisons.”

None of these individual steps, viewed “both individually and ‘as an ordered combination,’” transform the nature of the claim into patent-eligible

subject matter. *See Alice*, 134 S. Ct. at 2355 (*quoting Mayo*, 132 S. Ct. at 1297, 1298).

The receiving, granting, file creating, comparing, and supplying steps are known operations for gathering, maintaining and distributing a desired information and thus add little to patentably transform the information gathering abstract idea.

Furthermore, each of the receiving, granting, file creating, comparing, and supplying steps are themselves abstract ideas. For example, “comparing” information is an abstract idea. *See Blue Spike, LLC v. Google Inc.*, 2015 WL 5260506 (N.D. Cal. 2015), *aff’d*, No. 2016-1054, 2016 WL 5956746 (mem) (Fed. Cir. 2016). Merely combining three abstract ideas does not render the combination any less abstract. *Cf. Shortridge v. Found. Constr. Payroll Serv., LLC*, 2015 WL 1739256 (N.D. Cal. 2015), *aff’d*, No. 2015-1898, 2016 WL 3742816 (Fed. Cir. 2016).

As for the fourth step, “designating, by the portal, at least one of the candidate vendors as an authorized vendor based on the comparisons” (claim 1), it simply expresses a mere post-solution activity. Once the desired information is obtained, a candidate vendor is designated. *Cf. CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371 (Fed. Cir. 2011) (“The Court [*Parker v. Flook*, 437 U.S. 584 (1978)] rejected the notion that the recitation of a practical application for the calculation could alone make the invention patentable.”).

Finally, we note that claim 1 calls for the recited method to be “computer-implemented,” that the steps involve a “portal,” and the file-creation step involves a “database.” But any general-purpose computer

available at the time the application was filed would have satisfied these limitations. The Specification supports that view. *See Spec.*, paras. 44–45. “[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility.” *Alice*, 134 S. Ct. at 2358.

For the foregoing reasons, we find that claim 1 covers claimed subject matter that is judicially-excepted from patent eligibility under § 101. The other independent claims — method claims 5 and 9 and computer-readable medium claims 11, 15 and 19 that parallel claim 1 — similarly cover claimed subject matter that is judicially-excepted from patent eligibility under § 101. The dependent claims describe various information gathering and distributing schemes which do little to patentably transform the abstract idea.

Therefore, we enter a NEW GROUND OF REJECTION of claims 1–20 under 35 U.S.C. § 101.

For the foregoing reasons, the rejections are reversed but the claims are newly rejected under § 101.

CONCLUSIONS

The rejection of claims 1, 3, 5–8, 11, 13, and 15–18 under 35 U.S.C. § 103(a) as being unpatentable over Islam and Baillargeon is reversed.

The rejection of claims 2 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Islam, Baillargeon and Etkin is reversed.

The rejection of claims 4 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Islam, Baillargeon and Klehr is reversed.

The rejection of claims 9, 10, 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Islam and Moro is reversed.

Claims 1–20 are newly rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

DECISION

The decision of the Examiner to reject claims 1–20 is reversed.

Claims 1–20 are newly rejected.

NEW GROUND

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” 37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

REVERSED; 37 C.F.R. § 41.50(b)